

REMARKS

Favorable reconsideration of the subject application is respectfully requested in view of the following remarks. With the above amendment, claims 1 and 8 have been cancelled and new claim 18 has been added. Claims 3 and 11 have been amended to change dependence from cancelled claim 1 to newly added claim 18. No new matter has been added. It should be noted that the above amendments are made without acquiescence, and without prejudice to prosecution of any or all subject matter modified and/or removed by this amendment in a related divisional, continuation and/or continuation-in-part application.

Claims Rejected Under 35 U.S.C. § 112, first paragraph (written description)

Claims 1, 3, 4, 8, 11, and 15 are rejected under 35 U.S.C. § 112 first paragraph as allegedly containing subject matter that was not described in the specification in such a way as to reasonably convey to the skilled artisan that inventors were in possession of the invention at the time the application was filed. In particular, the the Action alleges that the limitation reciting sequences consisting of at least 20 contiguous residues of the sequence provided in SEQ ID NO: 303 from nucleotide 1888 to nucleotide 2731 is new matter since the specification allegedly does not describe this portion. Additionally, the the Action contends that the specification does not describe sequences that hybridize to the sequences set forth in SEQ ID NOs:302 and 303.

Applicants respectfully traverse this rejection and submit that the specification provides more than adequate description of the claimed invention. However, solely in order to advance prosecution of particular embodiments of the Applicants' invention, Applicants have cancelled claims 1 and 8 without prejudice. Therefore, Applicants submit that the rejection has been obviated. Applicants submit that new claim 18, drawn to polynucleotides comprising SEQ ID NOs:302 or 303, satisfies the written description requirement under 35 U.S.C. § 112, as noted on page 3 of the Action. Accordingly, Applicants respectfully request withdrawal of the rejection.

Claims Rejected Under 35 U.S.C. § 112, second paragraph (indefiniteness)

Claims 1, 3, 4, and 11 stand rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Action alleges that claim 1, part (c) recites the broad recitation "at least" but also recites the narrower statement "consisting of" which is the narrower statement of the range/limitation, thus rendering the claim indefinite.

Without acquiescing to the grounds of this rejection, Applicants respectfully submit that this rejection is moot in view of the cancellation of claims 1 and 8. Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Claims Rejected Under 35 U.S.C. § 102(e)

Claims 1, 3, 4, 8, 11, and 15 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Xu et al. (U.S. Patent No. 6,395,278 B1) and Xu et al (U.S. Patent No. 6,329,505 B1). Applicants respectfully traverse this rejection on the following grounds.

Applicants submit that while the earliest priority date (effective filing date) of the 2 cited patents is prior to the effective filing date of the present application, the B305D sequences in these 2 references, *i.e.* SEQ ID NOs:374 and 375 cited by the Action, were not disclosed until the priority application No. 09/288,946, filed on April 9, 1999. Therefore, the above sequences were not described in the cited patents before the invention thereof by the Applicant. Applicants submit therefore that the instant invention is not anticipated by the cited references and the rejection may be properly withdrawn.

Application No. 09/924,400
Reply to Office Action dated November 14, 2002

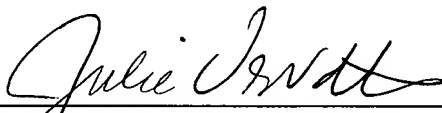
The Commissioner is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Applicants respectfully submit that the claims remaining in the application are now allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

Tony N. Frudakis et al.

SEED Intellectual Property Law Group PLLC



Julie A. Urvater, Ph.D., Patent Agent
Registration No. 50,461

Enclosure:

Postcard

701 Fifth Avenue, Suite 6300
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031
D:\NrPortbl\iManage\JUDYD\382146_1.DOC